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DEC 17 2007

OFFICE OF PETITIONS

In re Application of :
Brown : DECISION ON PETITION
Application No. 10/680,426 :
Filed: October 8, 2003 :
Atty. Dkt. No.: BROW3007/BEU :

The above-identified application has been forwarded to the Office of Petitions for consideration of the petition to withdraw the holding of abandonment under 37 CFR 1.181 filed October 9, 2007.

The petition under 37 CFR 1.181 to withdraw the holding of abandonment is hereby **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is not a final agency decision.

This application became abandoned July 12, 2007 for failure to timely submit a proper reply to the Notice of Allowability (Notice) mailed April 11, 2007. The Notice set a three month statutory period of time for reply. Notice of Abandonment was mailed August 8, 2007.

The Notice required submission of corrected formal drawings. A review of the record does not reveal that corrected formal drawings were timely submitted.

Petitioners argue that corrected formal drawings were submitted on May 24, 2006 and that the drawings were believed to be compliant. Petitioners further argue that Form PTO-948 was not attached to the Notice. Petitioners further indicate that the reference in the Notice to Form PTO-948 appeared inadvertent and that corrected formal drawings were not required. Petitioners, therefore, did not reply to the Notice.

In accordance with 35 USC 133, "[u]pon failure of the applicant to prosecute the application within six months after any action therein, of which notice has been given or mailed to the applicant, or within such shorter time, not less than thirty days, as fixed by the Director in such action, the application shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Director that such delay was unavoidable."

Petitioners failed to submit a reply to the Notice within the statutory period of time for reply. Therefore, the application went abandoned as a matter of law on July 12, 2007. There is no indication in the record that petitioners made any effort to reply to the Notice, including the argument that the drawing requirement set forth in the Notice was inadvertent and that drawings were not required, within the statutory period of time for reply to the Notice. Failure to timely submit a reply to the Notice is not deemed grounds for withdrawal of the holding of abandonment.

Any renewed petition should be accompanied by evidence to establish that a reply to the Notice was timely submitted within the three month statutory period of time for reply.

ALTERNATE VENUE

Petitioner may wish to consider filing a petition stating that the delay was unintentional. Petitioner's attention is directed to 37 CFR 1.137(b) which provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unavoidable". An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required petition fee and reply.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

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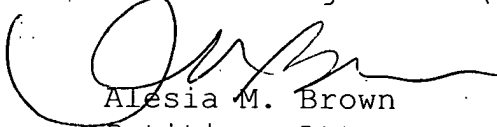
By facsimile:

(571) 273-8300

By hand delivery:

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Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.



Alesia M. Brown
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Office of Petitions